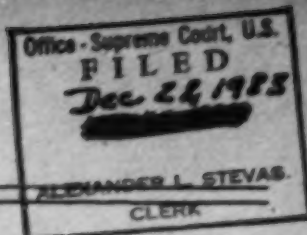


88 - 1454



IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1983

WINFIELD S. CONDUCT,  
et al.

Appellants,

vs.

COUNTY OF SAN LUIS  
OBISPO,

Appellee.

ON APPEAL FROM THE COURT  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

WAYNE A. CONDUCT  
114 East Fifth St.  
Santa Ana, Cal. 92701  
714/558-3211  
Attorney for Appellants

### Questions Presented

This appeal concerns the application of the Fifth Amendment to the United States Constitution and Article 1, Section 14 of the California constitution to the inverse condemnation action maintained by Plaintiffs and Appellants against defendant and appellee County of San Luis Obispo. Specifically, Plaintiffs and Appellants contend that the action by Defendant and Appellee in dissolving the political sub-division (known as the Our Town Community Services District) deprived them of the use of their real property so completely and totally that an action in inverse condemnation will lie.

Parties to the Proceeding Below

All parties appeal in the caption of the case in the United States Supreme Court.

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### Opinions Below

The Opinion of the Court of Appeal of the State of California, Second Appellate District, Division Six is printed in Appendix "A" hereto and is not reported in any official or unofficial report.

### Jurisdiction

The ground on which jurisdiction of the Court is invoked is the Fifth Amendment of the Constitution of the United States of America prohibiting the taking of property without just compensation.

The nature of the proceeding below is an action in inverse condemnation.

The judgment petitioner seeks to have reviewed was entered on July 29, 1983. A hearing in the California Supreme Court was denied by order dated September 29, 1983. The notice of appeal herein was filed on December 28, 1983 in the California Court of Appeal, Second District, Division Six and the California Supreme Court.

The jurisdiction of this court is invoked under Section 1257(2) of Title 28 of the United States Code.

The following cases sustain jurisdiction:

Pruneyard Shopping Center v Robins  
447 U.S. 74, 100 Sup. Ct 2035 (1980)

Zschernig v Miller 389 U.S. 429,  
88 Sup. Ct 664

Gotthilf v. Sills (1963) 375 US 79,  
79-80, 84 S Ct 187; 11 L Ed2d 159;

Douglas v. California (1963) 372 US 353, 354 fn1, 93 S Ct 814, 9 L Ed2d 811;

Minneapolis, St. P & S, Ste. M R. Co. v. Rock (1929) 279 US 410, 412, 49 S Ct 363, 73 L Ed 766;

Prudential Ins. Co. v. Cheek (1922) 259 US 530, 533-534, 42 S Ct 516, 66 L Ed 1044.

A copy of the judgment, of the Order on hearing by the California Supreme and of the Notice of Appeal is included in Appendix "A" appended hereto.

#### Constitutional and Statutory Provisions Involved

United States Constitution, Amendment V. which reads in part ". . . nor shall private property be taken for public use, without just compensation."



### Statement of the Case

This case involved the dissolution of the Our Town Community Services District, (the "District") a political subdivision of the State of California, by Appellee, the County of San Luis Obispo. Appellants are property owners within the boundaries of the district.

Appellants contend that the dissolution of the district deprived them of the governmental entity whose powers were theretofore used to provide them with services such as the purveying of water, street lighting and maintenance, trash pick-up, fire protection and assessment and collection of taxes. Although Appellants argued without success in the trial court and the Court of Appeal that the dissolution was not in accordance with governing law, they also argued that

they were entitled to compensation pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 14 of the California Constitution in that Dissolution constituted a taking of property by Appellee without just compensation. The trial court granted Appellee's motion for nonsuit as to the entire case. Implicit therein was a ratification of Appellee's actions relating to the dissolution procedures and, significant to this appeal, a determination that no remedy in inverse condemnation would lie. Appellants contend that this determination is erroneous and that such error is of fundamental concern of this Court.

Any heirarchical governmental system permits realing ments and adjustments by the superior authority of the junior franchises. But Appellants challenge

the right of such superior powers, in this case Appellee County of San Luis Obispo, to effectuate an adjustment which leaves dependents of the inferior government, in this case the district, without the means of economic survival. This was the point lost by the California Court of Appeal - that disenfranchising the district destroyed the economic value of the property within the district. Therefore, even if the dissolution of the District was a proper exercise of the police power of Appellee, Appellants' claims in inverse condemnation are proper because of the resulting complete and total destruction of value of the houses and residential property.

This Court has recognized the remedy of inverse condemnation and the right to compensation in appropriate circumstances. Pruneyard Shopping Center

v Robins, 447 U.S. 74; (1980);

Zschernig v Miller, 389 U.S. 429, 88  
Sup. Ct 664 (1968).

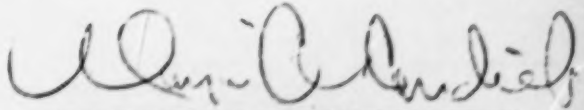
### Substantiality of Federal Questions

The case presented to this Court by Appellants involves a basic question of governmental power. The constitutional issue is the availability of inverse condemnation as a remedy in the context of one governmental entity, a County in the State of California, abolishing another governmental entity - a community services district in the State of California. The consequences of the abolition for the constituents of the District is a complete destruction of the value of their homes and real property. The California Court of Appeal does not view this as a taking of property compensable under either the State or Federal Con-

stitution. Appellants have been grievously injured by the abolition of the District. This Court should accept this case to establish the law regarding inverse condemnation liability when one government dissolves another.

Conclusion

For the foregoing reasons, it is respectfully submitted that probable jurisdiction should be noted.

A handwritten signature in cursive script, appearing to read "Wayne A. Condict", written in dark ink.

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WAYNE A. CONDUCT  
Counsel for Appellants

-APPENDIX-

-9-

NOT FOR PUBLICATION  
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

WINFIELD S. CONDUCT,	)
et al.	)
Plaintiffs and Appellants,	)
vs.	)
COUNTY OF SAN LUIS OBISPO,	)
Defendant and Respondent.	)

---

This is an appeal from a judgment of nonsuit granted as to all three causes of action stated in the appellants' complaint.

FACTS

Appellants brought suit against the County of San Luis Obispo for inverse condemnation and declaratory relief. The appellants are the developers of the Our Town retirement community.

It is their contention that the board of supervisors wrongfully dissolved the Our Town Water District.

The Our Town Water District was created in 1962. In 1964 all members of the water district's board of directors, two of whom are appellants, moved outside the County of San Luis Obispo. After six and a half years the appellant returned to San Luis Obispo. In 1972 the board of supervisors was asked to confirm Winfield, Dorothy and Gregory Conduct as directors of the Our Town Water District.

In light of the fact that the appellants had been absent from the county for over six years, the board of supervisors declined the request for confirmation until they could conduct a study. The board of supervisors requested findings and direction from the Local Agency Formation Commission (LAPCO). LAPCO

submitted an analysis outlining four alternatives. After considering LAPCO's report, the board of supervisors voted to dissolve the Our Town Water District.

### ANALYSIS

In reviewing a trial court's ruling of nonsuit, all favorable inferences must be granted to the non-moving party. In this case, the question is complicated by the fact that the trial court based its decision upon the evidence and ruling of the board of supervisors. Therefore, we must consider the propriety of the board of supervisors' decision as well as the correctness of the trial court's ruling.

The appellants raise three issues on appeal. First, they contend that the dissolution of the water district was wrongful. Secondly, the appellants



argue that inverse condemnation is an appropriate remedy. Lastly, they assert that San Luis Obispo County is required to carry on the obligations of the water district. Each of these issues shall be discussed separately.

#### DISSOLUTION OF THE WATER DISTRICT

Government Code section 56367 lists four grounds upon which the board of supervisors may dissolve a local governmental agency. A finding that any one of the four grounds exist in sufficient justification for dissolution. We find that the water district was properly dissolved.

Government Code section 56367(a) authorizes dissolution if the board of supervisors finds, "That there has been a nonuser of corporate powers, as specified in Section 56714, and a reasonable probability that such nonuser may continue." Both prongs of the section

56367(a) test were satisfied when the board of supervisors dissolved the district.

The first prong of the test was met with the evidence produced by the appellants. Government Code section 56174 states that there has been a nonuser of corporate powers if, for a period of three years "There has not been a duly selected and acting quorum of the board of directors of the district." To determine if the water district lacked a quorum we must consider Government Code section 1770. That code section states that a vacancy occurs in the board of directors position when the holder of that office ceases to be an inhabitant of the county, city or district for which he was appointed.

Both the board of supervisors and the trial court were presented with

evidence that all members of the water district's board had moved out of the county. Government Code section 1770 provides that the act of establishing a residence outside the county one is to serve automatically removes one from his or her position on the board of directors. The evidence submitted by the appellants indicated that all board members had been absent from their positions for over six years. Clearly the first prong of Government Code section 56367(a) had been satisfied.

The second prong of the section 56367(a) requires a finding that there is a "reasonable probability that such nonuser may continue." The appellants contend that no such probability existed because they had returned to San Luis Obispo County and were again engaged in working on the Our Town development. The appellants

also point out that they had petitioned the board of supervisors to confirm three members of the Condict family as new directors for the water district board. These acts, the appellants contend, demonstrated that the nonuser of corporate powers would not reasonably continue.

The Condict family clearly demonstrated its willingness to assume responsibility for exercising the water district's corporate powers. Had the San Luis Obispo Board of Supervisors chosen to appoint the three members of the Condict family to the board of directors, the nonuser of corporate powers would have come to a halt. However, the board of supervisors utilized its legislative discretion and elected to decline the respondent's request for placement of themselves on the water district board. Thus the board of supervisors would

then find that nonuser of corporate powers would reasonably continue.

The board of supervisors did not abuse its powers in opting to refrain from making any appointment. There is no statute which compels a board of supervisors to place individuals on a water district board of directors. In adopting this position, the San Luis Obispo County Board of Supervisors employed a rather circuitous, though permissible course to attain a statutorily permissible objective.

The board of supervisors reasoned as follows: First, it determined that a nonuser of corporate powers was presently in effect because all duly elected members of the water district board had been absent from their positions for over three years. Secondly, the supervisors

acknowledged that no use of corporate powers could take place if it declined to make new appointments. Lastly, the supervisors surmised that the nonuser of corporate powers would reasonably continue because of their own refusal to name new members to the water district board. Once the board of supervisors was able to conclude that the nonuser would reasonably continue it was justified in electing to dissolve the Our Town Water District.

All elements of Government Code section 56367(a) had been satisfied and the board of supervisors lawfully dissolved the water district. We now must consider whether or not the trial court properly granted the respondent's motion for nonsuit. The test to be applied in granting a nonsuit was set forth in Reynolds vs. Willson (1958) 51 Cal.2d

94, at page 99, where the court stated that the rule is familiar that "A nonsuit may be granted only where, disregarding conflicting evidence on behalf of the defendants and giving to plaintiff's evidence all the value to which it is legally entitled, therein indulging in every legitimate inference which may be drawn from that evidence, the result is a determination that there is no evidence of sufficient substantiality to support a verdict in favor of the plaintiff. . . ."

Applying this test to the case at bar we find that the trial court correctly granted the motion for nonsuit. Even indulging the appellants every legitimate inference, we must conclude that there could not be a use of corporate powers until the board of supervisors appointed new directors. Therefore, appellants

failed to present a prima facie case and the trial court properly granted the nonsuit.

INVERSE CONDEMNATION AS TO THE LANDOWNERS

Appellants contend that the dissolution of the water district amounted to a public taking of private property. The appellants assert that without water their property has been rendered worthless. The appellants argue that they are entitled to compensation for the public taking of their private property interest.

This issue was raised in Hollister Park Inv. Co. vs. Goleta County Water Dist. (1978) 82 Cal.App.3d 290. In Hollister the plaintiff brought suit against Goleta County Water District when the local water district refused to grant his development a water connection. Hollister asserted that the denial of



water to its land amounted to a diminution in the value of the property. The Court of Appeal held that the plaintiff was not entitled to recover damages for inverse condemnation.

The court, quoting Swanson vs. Martin Muni, Water Dist. (1976) 56 Cal.App.3d 512, stated, "A potential water user does not possess an absolute right to be treated in the same manner as existing water consumers within (a) water district . . . ." (Hollister Park Inv. Co. vs. Goleta County Water Dist., supra, 82 Cal.App.3d 290, at p. 294.) In applying this rule to the case presently at bar, we must note that the Our Town Water District was not supplying water. The appellants, at best, could only be considered potential water users. Had the board of supervisors refrained from dissolving the water district the landowners would still

have been incapable of obtaining water because there were no directors. As stated in Hollister, a potential water user may be denied access to water without giving rise to an action for inverse condemnation. Consequently, we hold that the appellant's cause of action for inverse condemnation is without merit. The trial court's judgment of nonsuit as to this issue was properly granted.

INVERSE CONDEMNATION AS TO OUR TOWN WATER COMPANY

The appellants contend that the dissolution of the water district amounted to a public taking of assets belonging to th Our Town Water Company. Specifically the appellants argue that the dissolution of the district resulted in the abrogation of the Water Service Lease Agreement between appellant Gregory R. Condict

and the district. The appellants have failed to present any evidence which would support this conclusion. No evidence appears in the record which reflects an agreement between appellant, Gregory R. Condict and the district. Furthermore, there is no evidence which demonstrates that interference with this alleged agreement in any way effected the Our Town Water Company. The appellants have clearly failed to create an adequate record so as to properly raise this issue on appeal. Consequently, in the absence of evidence indicating error by the trial court we must affirm its ruling.

THE COUNTY'S OBLIGATION TO THE WATER DISTRICT

The appellants contend that the county had an obligation to, in some manner, provide water services to Our Town Develop-

ment when it dissolved the water district. As authority for this proposition the appellants cite Government Code sections 56501, 56503 and 56512. These statutes deal with a county's power and authority in winding up a water district's operations. Nowhere in these code sections does the Legislature mandate that a county must procure water for residents whose water district has been dissolved. The Legislature clearly did not intend that counties be so burdened.

The judgment is affirmed.

NOT FOR PUBLICATION.

We concur:

STONE, P.J.

ABBE, J.

GILBERT, J.

Richard C. Kirkpatrick, Judge  
Superior Court, County of San Luis Obispo

---

Wayne A. Conduct, for Plaintiffs and  
Appellants.

Burke, Smith, Helenius & Hayes and  
Christopher A. Helenius, for Defendant  
and Respondent.

**CLERK'S OFFICE, SUPREME COURT**  
**4250 STATE BUILDING**

SAN FRANCISCO, CALIFORNIA 94102

I have this day filed Order \_\_\_\_\_

In re: 2 Civ. No. 67089

WINFIELD S. CONDUCT, et al.

108.

COUNTY OF SAN LUIS OBISPO

**Respectfully,**

**Clerk**

WAYNE A. CONDUCT  
114 East Fifth Street  
Santa Ana, California 92701  
714/558-3211

Attorney for Plaintiffs,  
and Appellants

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

WINFIELD S. CONDUCT, DOROTHY  
A. CONDUCT, RANDALL CRAIG CONDUCT,  
KEVIN CARY CONDUCT, GREGORY  
ROBIN CONDUCT, PRESTON FOREST  
CONDUCT, AND WINFIELD S. CONDUCT,  
III. ) 2nd Civil  
No. 67589

Plaintiffs and  
Appellants,

vs.

COUNTY OF SAN LUIS OBISPO, A  
POLITICAL SUBDIVISION, DOES I  
THROUGH XXX, INCLUSIVE,

Defendants and  
Respondents.

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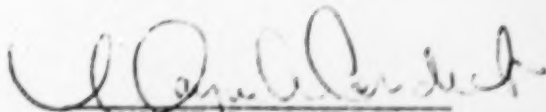
NOTICE OF APPEAL TO THE SUPREME

COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that WINFIELD S. CONDUCT, DOROTHY A. CONDUCT, RANDALL CRAIG CONDUCT, KEVIN CARY CONDUCT, GREGORY ROBIN CONDUCT, PRESTON FOREST CONDUCT, AND WINFIELD S. CONDUCT, III, the plaintiffs and appellants herein, hereby appeal to the Supreme Court of the United States from the final judgment of this Court entered on July 29, 1983, a hearing on which was denied by the California Supreme court on September 29, 1983.

This appeal is taken pursuant to Section 1257(2) of Title 28 of the United States Code.

Dated: December 28, 1983



WAYNE A. CONDUCT  
Attorney for Plaintiffs and  
Appellants



PROOF OF SERVICE BY MAIL (1013A, 2015.5 C.C.P.)

STATE OF CALIFORNIA     )  
                                  )  
COUNTY OF ORANGE        )

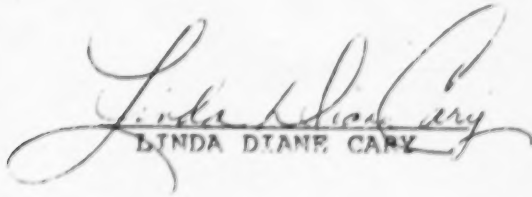
I am a resident of the County of Orange and am over the age of eighteen years and not a party to the within entitled action; my business address is 114 E. Fifth Street, Santa Ana, California.

On December 28, 1983, I served the within NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

on the addressees hereinafter indicated by depositing in the United States mail at Santa Ana, California, postage fully prepaid addressed as follows:

BURKE, SMITH, HELENIUS & HAYES  
A Law Corporation  
1880 Santa Barbara Street  
San Luis Obispo, California 93406  
(805) 544-8100  
Attention: Christopher Helenius

I declare under penalty of perjury,  
that the foregoing is true and correct,  
and that this declaration was executed  
on December 28, 1983 at Santa Ana, Calif-  
ornia.

  
LINDA DIANE CARY